

Kentucky Environmental Quality Commission Public Forum on Toxic Pollutants

Meeting Minutes

January 27, 2005

Capitol Annex Room 113

Frankfort, Kentucky

EQC Commissioners Present

Lindell Ormsbee, Chair

Gary Revlett

Betsy Bennett, Vice Chair

Patty Wallace

Laura Knoth

Eugene Zick

Speakers/Representatives Present

John Lyons, Director, Division for Air Quality

Rebecca Farris, Office of the Secretary, EPPC

Mark York, Office of the Secretary, EPPC

Stephanie McSpirit, Martin Co. Project Team

Sean Alteri, Division for Air Quality

Bruce Scott, Director, Div. of Waste Management

Commissioners not attending

Gordon Garner

EQC Staff Present

Leslie Cole, Executive Director

Erik Siegel, Assistant Director

Frances Kirchhoff, Executive Secretary

Open Meeting

Mr. Lindell Ormsbee, Chair of the Environmental Quality Commission opened the meeting at 2:00 p.m. There were approximately 26 people in the audience. The first order of business was to approve the minutes of the October 13, 2004 meeting. Betsy Bennett made the motion to approve the minutes, seconded by Eugene Zick. The motion passed unanimously with all commissioners present voting.

Air Toxics and Mercury Task Force

John Lyons, Director, Division for Air Quality

The first agenda item was a status report of the Environmental and Public Protection Cabinet (EPPC) Air Toxics and Mercury Task Force. Chair Ormsbee introduced John Lyons, Director of the Division for Air Quality.

Mr. Lyons gave a PowerPoint presentation concerning the past, present and future challenges of air toxics. Mr. Lyons noted that the Clean Air Act Section 112(b) listed 188 Hazardous Air Pollutants targeted by EPA for reductions in releases. Mr. Lyons said that people are exposed to air toxics a number of ways including breathing contaminated air, eating food products that have been contaminated by deposited air toxics, drinking water contaminated by air toxics and ingesting contaminated soil; touching contaminated soil, dust, or water. Sources of air pollutants are industrial, (combustion, solvents, and processes) mobile, (incomplete combustion, fuel/fluids/additives, secondary formation) indoor, (building materials, combustion, cleaning products, tobacco smoke, personal care products, pesticides) and nature, (geological, biogenic, marine).

The goal of sampling is to address the concerns posed by air toxics emissions by characterizing ambient levels, prioritizing the focus of programs, addressing the impact on public health and the environment. In Kentucky the first air toxics sampling was at National Electric Coil site in Harlan County in 1989. Since that time, DAQ has taken more than 10,500 samples for volatile organics, semi-volatile organics, metals, dioxin/furans, PCBs, carbonyls, and acidic/basic gases. Major toxics studies have been conducted in Calvert City, Tri-State Geographic Initiative Kenova cluster, Tri-State Geographic Initiative Greenup cluster, Urban Trends Study and West Louisville Air Toxic Study. Other toxics studies have included Brooks Elementary, Franklin County Tire Fire, Fort Wright/Taylor Mill, Boyle County rail car fire, Georgetown, and Owingsville PB Station.

The National Air Toxics Trends Assessment (NATA) uses emissions data and monitoring data to look at air toxics on a national scale. The assessment used 33 HAPS identified as those of most concern. The National Air Toxics Trends Program is used to define monitoring approaches, provide data to allow determination of Data Quality Objectives (DQOs) and to characterize, prioritize, and address the impacts of HAPS on the public health and the environment.

Mr. Lyons next gave a brief overview of the EPPC Air Toxics Workgroup. It is comprised of 10 individuals representing the public interest, private, and industrial sectors. The original concept was to hold four stakeholder meetings to discuss legal issues, historical data-gathering efforts, goals of a state program and implementation of a program. The group has now met 4 times and hopes to finalize its recommendations by this summer.

Mt. Lyons provided current and ongoing air toxics monitoring efforts. He said the state would continue to operate 4 sites in Calvert City and the tri-state area. He indicated that the Division for Air Quality would resume toxics sampling at urban trends sites (Lexington, Covington, Owensboro, Paducah and Bowling Green). The Division will also continue to operate rural trends monitoring sites in Hazard and add a site in Ohio County. The state will also add monitoring sites in Carroll, Gallatin and Hardin Counties. The Division will also develop a mercury-monitoring network.

Questions and Answers

Q. Where is the monitor in Lawrence County?

A. There is no monitor located there at this time.

Q. Where is mercury sampling done in Lawrence County?

A. It is located at Grayson Lake, in Carter County.

Q. Since the mercury level is so high, is there a plan to have the children tested?

A. This agency would not, that is a public health issue.

Q. Is the West Jefferson County Task Force doing any mercury monitoring?

A. I don't think so. Not that I know of.

Q. Where in Ohio County are you proposing to put the monitor?

A. Rock Port.

Q. Give me an idea of what you are considering when you developing your residual risk?

What factors are involved?

A. Human health is one of the factors. It is a convoluted process. There are residual risk numbers based on one in a million chance of a person getting cancer. Depending on what

pollutant, they have different numbers and levels. If you have a site that is more than one in a million then you have cause for concern. EPA does not stop there. They have a range between one and 10,000 and one in a million. Any thing above one in the thousand is totally unexcitable and must be addressed. However anything between 1 and ten thousand and one in a million, then you have to consider how many people are effected, what the cost is to control it. And what kind of industry it is (how many facilities there are). It is looked at source by source.

Q. Has the group decided which of the HAPs you are looking at? Ozone, Pm 2.5?

A. No. That is another thing we have to establish—what are the categories. I would believe that it would be at least the 188 HAPs.

Q. What is the ultimate that your task force will be able to come up with?

A. I think the intent is to get something into regulation—something that is enforceable, something that is there and that people know what to expect. Current regulations are very broad. We are doing this in the absence of EPA action. We have got to meet the minimum standards that EPA would expect other wise we will not have an approvable program.

Q. It is your expectation that the task force will have something by this calendar year?

A. Certainly, I think the goal is more mid-year.

Q. You said that you have 12 existing air toxic monitors and you are proposing six more?

A. Yes, we will expand out to the urban areas again.

Q. What are you doing with the information that you are collecting?

A. We have done risk assessment on all that data.

Q. Can you use that information to target certain pollutants for reductions?

A. Not really. We used it to focus on certain problems and certain contributors—Calvert City being an example. We use it to take some actions and support some actions.

Q. Is the data available?

A. Just email me and I'll see that you get it.

Q. Will indoor sources be a part of that?

A. No. We don't regulate indoor. As a matter of fact, EPA barely regulates it. It is more of an educational outreach.

• Audience Questions

Q. Lee Dew, the Water Sentinel Director for Western KY provided commissioners with a map of 10 existing power plants in Western KY and 3 proposed power plants. NOX emissions from Robert Reed have increased 1303 percent. SO2 increased 2,060 percent and CO2 increased 2,135 percent. By comparison to the Robert Reed Plant, 4 other plants that are close to Robert Reed, E B Wilson Plant, CO2 is down 14 percent, the Green River Plant of Kentucky Utilities is down 33 percent and Paradise Plant of TVA was down 44 percent, and Henderson Municipal Power and Light was down 80 percent. SO2 emissions from the EW Brown in Mercer County increased 104 percent increase between 1995 and 2005, CO2 increased 66 percent and NOx increased 41 percent. But they pale compared to Robert Reed. I simply ask the EQC, what is wrong at the Robert Reed Plant and is there some way we can find out why we have these incredible increases.

A. I can speculate that there are trading schemes on SO2 and NOX and that West KY Energy has converted some of their credits to the Robert Reed Plant.

Rebecca Farris, Secretary's Office, EPPC

Lindell Ormsbee next introduced Rebecca Farris to provide an update on the EPPC Mercury Task Force. Ms. Farris reported that the task force has met 8 times since October 2005. She noted that the Cabinet does take the mercury issue in Kentucky very seriously and improving information and knowledge is at the top of that list.

Members of the Mercury Task Force represent various state agencies including Fish and Wildlife, Tourism, Parks, Health and Family Services, and the Department for Environmental Protection. These agencies are working together to address the 5 points of EQC's recommendation. We are looking at developing what is currently happening at the state level and the federal level and developing responses to where we are going and what we would like to add based on EQC's recommendations.

Most importantly the task force is looking at where the partnerships are in state government and outside of state government. When you receive the task force report (by the end of Feb.) this will be the first step in addressing mercury in Kentucky. We hope we can all work together with all the partners that are needed especially health, public and children. Some of the partners will be the cooperative extension service and the Education Cabinet. We also need to reach out in terms of bilingual communication. In the report you will see one roadblock is the expense. Partnerships will be vital for this reason.

Q. Will there be more public have more input?

A. Yes, this is just a first step to addressing EQC's recommendations.

Q. Is the Division of Water a part of these meetings?

A. Yes, DEP is both Air and Water.

EQC Comment. Ms Bennett requested that Ms. Farris look into the matter that the Division of Water is talking about stopping tissue testing for mercury in Lake Cumberland and this seems like the wrong time to drop this project.

• **Audience questions/comments**

Tim Guilfoile, Water Sentinal for Northern Kentucky and former administrator of the Children's Hospital Medical Center in Cincinnati. I would highly recommend that the general public be given an opportunity to speak before the Mercury Task Force. Secondly, the medical evidence that is accumulated with regard to the risk to children's' developing nervous systems by mercury pollution is overwhelming. It is coming to the point where it is irrefutable. This is in my way of thinking a major child health issue facing the Commonwealth of KY. Therefore, I am very pleased that EQC took such care to put together such recommendations and pleased that EPPC has taken the steps to putting together a mercury task force and I believe before a final report is delivered, the general public should be given an opportunity to comment. And the issue to child health is fully and completely addressed.

A. The task force is a first step. It is the internal task force just responsible to responding to the EQC's recommendations.

2005 Legislative Session

Mark York, EPPC, Office of Communication and Public Outreach

The next agenda item was a review of the EPPC 2005 legislative agenda. Lindell Ormsbee introduced Mark York, with the Office of the Secretary, Office of Communications and Public Outreach to give an overview of the EPPC Legislative Agenda for 2005

Mr. York reported that the EPPC legislative proposals were under consideration in the Governor's office and were not available at this time for public discussion.

Mr. York reviewed some of the other issues coming up in the session including Senate Bill 41, which is the EPPC reorganization bill. The purpose of the reorganization was to make the Cabinet more efficient and realize a cost savings. Over the past year as a result of the reorganization, in the area of environmental protection, the state has realized some significant cost savings.

For example, Mr. York reported that based on the biennial budget request submitted by the former office of Petroleum Storage Tank Environment Fund in 2003 the budget was just over \$3.3 million for year 2005. In preparing the operating budget based on actual salaries, the Division of Waste Management, now has the former office of Petroleum Storage Tank, budgeted just over \$2.6 million representing a savings of more than \$700,000 or 21 percent of the previous budget. The Division of Waste Management has applied that savings toward the claims payments backlog. In the Department of Natural Resources, two Commissioner and the Deputy Commissioners positions were eliminated realizing a net savings of \$200,000 per year. Another cost savings is in the Division of Forestry is now leasing vehicles used in fire suppression from the Cabinet of Transportation creating an annual savings of more than \$230,000.

Mr. York noted that he expected legislation in this session to include:

- Brownfields.
- Tax incentives for production and marketing of biodiesel fuel.
- A bill to provide a provision for new loggers to obtain a Master Logger designation while working and earn an income using a temporary logger's status while they wait for the next available class.

Stephanie McSpirit, Martin County Project Team, Eastern Kentucky University

Next, Mr. Ormsbee introduced Stephanie McSpirit with the Martin County Project Team at Eastern Kentucky University. Ms. McSpirit has worked with the citizens of Martin County to assist them after the Martin County Coal Slurry Spill.

She asked the EQC to endorse a piece of legislation before the General Assembly with regards to bulking up the public protection mechanisms involved in coal waste impoundments and dams in general. West Virginia is required to file an emergency Action Plan with local county responders and state officials. This is also the case in Pennsylvania, Indiana, and Ohio. In Kentucky, there is no such legislation. This was brought to her attention because of her work done with the citizens of Martin County for the past 3 years after the Martin County Coal slurry spill in October, 2000.

Ms. McSpirit noted that she conducted interviews of residents and during these informal interviews, many expressed concerns of the fact that there was no warning of the impoundment failure. Many residents, especially those on Cold Water Creek, woke up to go to work at 7 a.m. with the sludge inundating their property. Most citizens strongly agreed that legislation is needed.

Mr. Bill Caylor, with the Kentucky Coal Association, from the audience commented that coal companies agree that having an emergency plan is the responsible thing to do. He indicated that

this requirement should apply to all high hazard impoundments, not just coal. He also expressed concern about a public comment requirement. Ms. McSpirit read a draft resolution, which is attached and made a part of these minutes. She noted that the resolution applied to all high hazard impoundments, not just coal slurry impoundments.

Betsy Bennett made a motion to express EQC support for the proposed language for a joint resolution concerning Emergency Action Plans for high hazard impoundments. Mr. Gene Zick seconded the motion. Ms. Bennett also suggested that EQC send a copy of this to Senator Ray Jones and Representative Robin Webb. The motion passed unanimously with all commissioners voting.

The Commission also discussed funding for independent water testing in Martin County related to the Martin County Coal Impoundment slurry spill. The Commission recommended that it assist the citizens in Martin County secure funding from the Martin County Slurry Spill Trust Fund for testing and technical assistance. Commissioners agreed to send a letter to the Martin County citizens and local officials to make them aware of potential funding for this activity.

Regulatory Review

401 KAR 59:760 Commercial Motor Vehicle and Mobile Equipment Refinishing Operations

Mr. Ormsbee next introduced Sean Alteri, with the Division for Air Quality. Mr. Alteri briefed the Commission on 401 KAR 59:760 Commercial Motor Vehicle and Mobile Equipment Refinishing Operations. After discussion, a motion was made by Betsy Bennett to approve the regulation, seconded by Gene Zick. The motion passed unanimously.

401 KAR 63:005 Open Burning.

Next Mr. Alteri briefed the Commission regarding 401 KAR 63:005 Open Burning. After discussion, a motion to approve the regulation was made by Gary Revlett, seconded by Betsy Bennett and passed unanimously.

401 KAR 49:011 General provisions relating to area solid waste management plans

401 KAR 49:080 Solid Waste Grant Funds and Solid Waste Collector and Recycler Registration.

The Chair next introduced Bruce Scott, Director of the Division of Waste Management. Mr. Scott briefed the Commission on 401 KAR 49:011 - General provisions relating to area solid waste management plans and 401 KAR 49:080 Solid Waste Grant Funds and Solid Waste Collector and Recycler Registration. Motion to approve the regulations was made by Betsy Bennett, seconded by Gary Revlett and passed unanimously.

Other Business

The Commission discussed

- EQC 2005 priorities and progress report

The priorities of the annual meeting were listed and monthly Leslie will do a progress report for the Commissioners. Leslie asked for ongoing input from the Commissioners to be sure this is the direction EQC wants to go.

- **EQC Forestry Working Paper**

EQC Director Leslie Cole shared a draft Forestry Working Paper based on the EQC Forestry Roundtable held on Sept. 9, 2005. Ms. Cole asked that the Commissioners review the paper. Staff will also seek the Division of Forestry and the Department of Natural Resources input.

- **EQC TMDL Workgroup**

EQC identified TMDLs as one of its priorities for 2005. EQC staff, Erik Siegel, met with and

talked to a dozen or so individuals about TMDL issues and needs. This is a preliminary step to having an EQC TMDL roundtable or discussion group. A handout was given listing the comments of those interviewed.

- **Air Toxics Indicators**

EQC has prepared a draft set of air toxics indicators. Erik Siegel prepared the draft. Mr. Siegel noted that Kentucky is ranked 12th in the nation for hazardous air pollutants. The intend of the Air Toxics Workgroup, Larry Taylor, is to identify potential hot spots through additional monitoring and look at the possibility of legislation. The draft indicators will be sent out for review by various state agencies.

- **Green Schools Task Force**

Erik Siegel reported that he attended both meetings and said the second one was much more productive. It is developing into a "Green and Healthy Schools" initiative. The problem is there are no resources/money for this.

- **EQC ethics Award**

Ms. Cole reported that EQC has been recognized by the Executive Branch Ethics Commission for being the first Board/Commission in the State to have an Ethics Policy and has been issued a Leader in Ethics certificate.

- **Energy Star**

Ms. Cole announced that EQC has become one of the first Kentucky state agencies to become an Energy Star Partner. EQC will promote energy star and energy efficiency.

- **Earth Day**

Ms. Cole reported that this year EQC would be celebrating sustainable communities as part of its Earth Day awards program. The Commission has partnered with the League of Kentucky Cities to host the awards at the Gov. mansion on April 22.

Other matters discussed included EQC budget. With not further business the meeting adjourned at 5:00 p.m.



Signed Lindell Ormsbee, Chair

Date

Attach McSpirit legislation